

General Comments on Work Verification Plans

General Issues

All plans should be formatted to answer the questions in the Work Verification Plan Guidance in the order that they are raised. The answers should be complete. References to appendices or State law or regulations should be limited to supplementary information.

Many work verification plans (hereafter simply referred to as “plans”) continue to describe policies and definitions that are inconsistent with the interim final rule. In some cases, States attempted to anticipate the final rule, while in others they simply seemed to prefer an alternative policy. The final rule may change policies or program requirements, but until its publication, States must adhere to the regulations in effect. We cannot approve plans that contain these inconsistencies; States that continue to include them simply delay the approval of their plans.

Although we have tried to provide a thorough and comprehensive review, given the nature of the plans, it is possible that we failed to comment on something in the plan that conflicts with law or regulation or that we erroneously interpreted the absence of information as compliance with law and regulation. We reserve the right to require the State to amend its plan if we later find that a plan does not conform with all laws and regulations.

The Work Verification Plan is not the appropriate forum for suggesting policy changes. Plans should only address how their programs conform to the interim final regulation. It is not necessary to describe previous programs that are no longer in effect or to propose regulatory changes.

Many plans include general or incomplete references using phrases like: “may include”; “but not limited to”; “other responsible party”; “ancillary services”; or “other equivalent documentation.” Due to the number of such references, we did not individually comment for each occurrence. Each such reference should be replaced with specific information or just deleted. A State is always free to amend and resubmit its plan if it wishes to add a category at a later time.

The plans should not list activities that are not countable under the new work activity definitions, describe State exemption policies that are not related to determining whether a person is a work-eligible individual, or include otherwise extraneous information. In addition, in general they should not include descriptions of what is “not” part of an activity or other policy unless there is a compelling reason that adds to the clarity of the description. The added information just makes it more difficult for us to determine whether the overall plan is consistent with the work verification plan requirements.

I. Countable Work Activities

General Guidance that Applies to All Work Activities

Documentation: All paid activities must include written documentation of hours of employment. In general, only wage stubs and other employer-produced documents qualify as verifiable

documentation of paid hours. Phone calls do not constitute documentation, particularly when used to project hours of employment for up to six months. All activities, whether paid or not, should rely on written, signed documents to support hours of participation.

Verification: Standards of verification across State plans varied considerably. Some States provided detailed information, while others provided very limited and vague description of verification procedures. At a minimum, documents verifying actual hours of participation should include: the participant's name; actual hours of participation; the name of the employer, work site supervisor, educational provider, or other service provider; and the name and phone number of the person verifying hours.

Unsubsidized Employment

Self-employment: For the self-employed, we allow States to estimate actual hours by using gross income less business expenses to arrive at a net income figure that is to be divided by the Federal minimum wage. This method is acceptable when the State also uses this approach to determine eligibility for TANF benefits. If a State uses this method for determining eligibility, the plan should indicate this. If it does not use the same calculation, it should give more detail on how the State determines these figures and why an alternative methodology is proposed. However, this or any other alternative methodology for determining self-employment hours will not be approved if doing so would give the State an unfair advantage over other States that use the standard method.

Work Experience/Community Service

FLSA: Many States asserted that either all work experience or community service positions were subject to the Fair Labor Standards Act (FLSA) or that none were. We are currently working with the Department of Labor (DOL) to provide additional guidance, but it is unlikely that either position is in fact universally true. For example, some employers may be "exempt" from the FLSA, even if it otherwise would appear that there is an "employer-employee" relationship. It would be inappropriate to "deem" hours of participation in such a circumstance. On the other hand, if a State asserts that all of its work experience positions are training and exempt from FLSA and DOL subsequently determines otherwise, a State would have run afoul of the FLSA. It is the responsibility of the Department of Labor to determine whether or not the FLSA applies to a particular work experience activity. Any questions regarding the FLSA should be directed to the Wage and Hour Division of the U.S. Department of Labor at 1-866-4-USWAGE, TTY 1-877-889-5627 or the following web site: <http://www.dol.gov/esa/whd/flsa/index.htm>.

Job Search and Job Readiness Assistance

Durational limits: Job search and job readiness assistance is bound by statutory limitations on how long participation can count. This includes the six-week per fiscal year limitation (12 weeks if specified circumstances are met) and no more than four consecutive weeks. These durational limits cannot be converted to days or hours, ignored if the number of hours in this activity does not exceed some minimum threshold, or extended or waived based on the particular

circumstances of any individual. Reporting any hours of participation in a week as job search and job readiness assistance triggers the start of one week against the various durational limits.

Monitoring durational limits: The plans must include a description of how the State ensures that it observes these limits, not just a statement that they do observe them. In addition, some States qualify to count 12 weeks of job search and job readiness assistance on a month-to-month basis. The plan needs to include a description of how the State will track eligibility for 12 weeks of this activity and make the necessary adjustment if it no longer qualifies to count 12 weeks of the activity.

Actual hours: A State must report actual hours; it cannot use a job application or interview as a proxy for a standard set of hours of participation.

Job readiness activities: Job readiness activities must be limited to those activities that are directly related to finding or preparing for a job. This would not include activities that are only indirectly related to such purposes, such as finding day care, resolving housing and transportation issues, or applying for welfare benefits. In addition, some plans list domestic violence assessment and supportive services. Some of these activities do not meet the definition of job search and job readiness assistance because they do not constitute direct preparation for work. For example, seeking temporary shelter may be an important and valuable action for a domestic violence victim but is not a job readiness activity. If there are activities that directly relate to seeking or preparing for employment, you should amend the plan to describe them. Otherwise, a State might want to consider adopting the Family Violence Option (if it has not already) and granting federally recognized good cause domestic violence waivers if individuals cannot engage in other work activities, which will protect the State from a work penalty due to granting such waivers.

Verification: Most States describe a means for individuals in job search to document employer contacts but often do not describe how they verify the time reported in this activity. Each State should conduct at least a random review to verify hours of participation in self-directed job search. The plan should describe this review process. If the logs or time sheets are incomplete or the State is not able to verify the hours, then it should not report the hours of job search. If, in the verification process, a State discovers systemic data validation problems, it should address them in Section IV, Internal Controls.

Counting rehabilitation activities: The plan must describe the criteria used to establish that substance abuse treatment, mental health treatment, or rehabilitation activities are necessary. It must also describe the certification requirements for qualified medical or mental health professionals.

Vocational Educational Training

12-month lifetime limit: The vocational educational training lifetime limit of 12 months applies to any hours of participation in the activity that the State reports during the month, regardless of whether the participant has enough hours to count in the work participation rate. The plan

should indicate how the State monitors the 12-month limit on reporting vocational educational training, not just that it monitors it.

Embedded activities: Many plans include basic and remedial education and English as a Second Language (ESL) as part of vocational educational training, but they do not describe the criteria used to ensure that these activities are a necessary or regular part of the vocational education training. These criteria must be listed and must be specific. Otherwise, these activities count as one of the non-core educational activities.

Satisfactory Attendance at Secondary School

Deeming teen parents: Although teen parents can be deemed to be engaged in work if they attend school satisfactorily or participate in education directly related to employment for at least 20 hours, this is not an exception to reporting actual hours. The instructions to the TANF Data Report indicate that “States should report actual hours (as opposed to scheduled hours) in participation in secondary school [or its equivalent]. Individuals scheduled to attend classes but who do not attend classes should not be credited with hours of participation.” Subject to the statutory limit, such cases will be deemed to be engaged in work based on proper coding of work participation status, hours of participation, and age of the individuals

Providing Child Care Services for Community Service Program Participants

Daily supervision: In some States, the parents of the children in care were designated to be responsible for supervising individuals in this activity. We find this problematic because the parent is not affiliated with the TANF agency, which has responsibility for ensuring the appropriateness of its work activities, and because the parent is not present when the individual would need supervision and guidance. Certainly, parents have a vested interest in the quality of the care their children receive and should be able to offer input to the TANF agency regarding that care. They can also help fill out time sheets for actual hours and verify against their community service assignments, but the State needs to ensure that someone at the TANF agency or elsewhere is providing supervision and guidance in helping the individual move to self-sufficiency. The plan should indicate who fills this role.

II. Hours Engaged in Work

This section includes two topics: excused absences and FLSA deeming.

Excused Absences

Converting to hours: The 10-day excused absence policy cannot be converted to an hourly standard (e.g., 10 days cannot be converted to 80 hours). Counting any absence for any part of a day counts as one of the days available for excused absences.

Number of holidays: After reviewing State Work Verification Plans, we have decided that more than 10 holidays does not meet the standard we outlined in the preamble to the interim final rule, allowing a reasonable number of holidays. The State is free to designate 10 days of holidays to

count toward the participation rate for an individual. We will not approve plans with more than 10 days of holidays. If the State chooses to designate two or more successive days (such as Thanksgiving and the Friday after Thanksgiving) as holidays, they will constitute two of the 10 maximum holidays that it can count for participation. In addition, semester breaks and work shut downs are not considered holidays. If a State fails the participation rate due to a natural disaster or other catastrophe, it can make a request for a reasonable cause exception on that basis.

Scheduled hours: Each plan should make it clear that the excused absence and holiday policies apply only to the hours the individual was scheduled to participate and only to unpaid activities.

FLSA Deeming

Weekly limit: When deeming core hours, the State should base the hours of participation on the monthly TANF and food stamp benefits divided by the higher of the Federal or State minimum wage. This result should not be divided by 4.3 or otherwise converted to a weekly limit, because the limit does not apply to any one week, but to total hours for the month (or the average weekly hours). Also, the plan should note that deeming only applies once the individual participates for the maximum hours allowed under the FLSA.

Appropriate minimum wage: The FLSA formula should stipulate the use of the higher of the State or Federal minimum wage, as either could change and the State must use the higher of the two minimum wages at all times.

III. Work-Eligible Individual

Definition of work-eligible individual: A State may not alter the definition of a work-eligible individual. Some States did not accurately describe the work-eligible individual population, excluding individuals who were exempt from participation under a State policy. While a State is free to set its own exemption policies, this does not affect who is included in the calculation of work participation rates or the definition of “work-eligible individual.” Other States excluded individuals in families that were disregarded from the calculation of work participation rates due to having a child under one or a work-related sanction (for three months in the preceding 12-month period). While these disregards are allowable, they do not change the definition of “work-eligible individual.” The purpose of this section of the plan is for the State to describe its procedures for identifying work-eligible individuals defined in regulation, not to provide its own definition. The State should rewrite this section of the plan to conform to the interim final rule.

Excluding a parent caring for a disabled family member: For a parent caring for a disabled family member living in the home, the plan must define “disabled,” “family member,” and “attending school full-time.” This should include a means of ensuring that the need for care in the home is supported by medical documentation and describe the nature of the medical documentation used to make such determinations. If parents caring for a family member with a temporary disability are included in this group, the plan must describe its procedures for determining when the family member is no longer disabled and ensuring that the parent is then identified as a work-eligible individual.

SSP-MOE cases: The definition of work-eligible individual includes all adults receiving TANF or SSP-MOE assistance. It is not clear from some plans that both of these groups are captured. Some States do not have SSP-MOE programs, but the reference should still be to both in case that State creates such a program in the future.

IV. Internal Controls

The plan should contain a statement confirming that the State will maintain all pertinent findings produced through its internal control processes and that these findings will be available for use by ACF and other auditors in their review of the State's work verification system. All procedures must be in place by September 30, 2007.

V. Verification of Other Data Used in Calculating the Work Participation Rates

Based on a review of plans, we note that for each data element, plans must describe the State's data validation procedures to ensure "complete and accurate" data reporting. They must also describe any procedures employed to eliminate data inconsistencies between two or more data elements for each element.

Simply referring to the name of the program or system used to verify data, or to a separate report or set of regulations that governs data validation, is not sufficient.

The plan should include a brief description of how edit inconsistencies, assessment findings, etc. concerning work participation data are integrated into ongoing program operations to ensure continuous improvement in the data.